TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~267.~~ 71

THE COUNTY OF CALHOUN AND W. T. SMITH, TREASURER, APPELLANT,

vs.

THE AMERICAN EMIGRANT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED SEPTEMBER 26, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 267.

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VS.

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INDEX.

	Original.	Print.
Bill of complaint	4	1
Schedule A	17	4
Exhibit B	26	8
C	29	9
D	30	9
E	36	11
Subpœna in chancery	41	12
Marshal's return on subpœna	43	13
Restraining order	45	13
Marshal's return on restraining order	57	16
Record entry, October 15, 1872	60	17
Answer	62	17
Affidavit of H. L. Skinner	68	19
Affidavit of J. C. Savery	70	19
Record entry October 26, 1872	72	20
Amended answer	74	20
Record entry, March 8, 1873	76	21
Record entry, May 22, 1873	77	21
Record entry, May 29, 1873	78	21
Replication	80	21
Decree	82	22
Prayer for an appeal	85	22
Record entry, May 13, 1874	86	23
Appeal-bond	87	23
Original citation	89	23
Clerk's certificate	90	24
Assignment of errors	91	24

1 Pleas in the circuit court of the United States for the district of Iowa, at a term thereof begun and holden at the United States court-room, in the city of Des Moines, in the State of Iowa and district aforesaid, on the second Monday of October, it being the 13th day of October, A. D. 1873, before the Hon. James M. Love, district judge for said district of Iowa.

2

3 Be it remembered that heretofore, to wit, on the third day of October, A. D. 1872, The American Emigrant Company, by its attorneys, Messrs. Nourse, Kauffman & Holmes, filed in the office of the clerk of the United States circuit court for the district of Iowa its bill of complaint against The County of Calhoun, and W. T. Smith, its treasurer; which said bill of complaint is in words and figures following, to wit:

4 THE AMERICAN EMIGRANT COMPANY
vs.
THE COUNTY OF CALHOUN, IOWA, & W. T. Smith, treasurer of said county. } Equity.

To the circuit court of the United States for the district of Iowa:

Your orator, The American Emigrant Company, a body corporate created and existing under the laws of the State of Connecticut, and a citizen of said State, and W. T. Smith, the treasurer of said County of Calhoun, and also a citizen of the State of Iowa, shows to the court that your orator is the legal owner of the lands and real estate situated in the county of Calhoun and State of Iowa which are now particularly described in the Schedules A & C hereto attached and made a part of this petition. Your orator shows that the American Company acquired title to said lands through and

5 *and* from the said county of Calhoun on the 20 day of May, 1872, under and by virtue of a decree of this court entered upon the stipulation of your orator and the County of Calhoun in a certain suit then pending in this court, a copy of which stipulation and decree is hereto attached, marked "Exhibit B," and made a part of this petition. Your orator further shows that said lands were patented to the State of Iowa by the United States on the day of , , in pursuance of an act of Congress approved Sept. 28, 1850, and acts amendatory thereto, as swamp and overflowed lands accruing to the State of Iowa under said grant, and that the State of Iowa granted to the said Calhoun County, by acts of the general assembly of said State, all of said swamp-lands situated within said county.

Your orator further shows that under said swamp-land grant,

6 so called, the State of Iowa had caused selections to be made within said county of Calhoun of other lands, claiming the same as swamp and overflowed lands enuring to the State of Iowa under the said act of Congress approved Sept. 28, 1850, and acts amendatory thereto; that among the lands so selected are the lands described in Schedule C, hereto annexed and made a part of this bill. Your orator shows that the United States have refused to issue patents for said lands under said grants and that the title thereto still remains in the Government of the United States, but the right of the State of Iowa to receive patents for the same has not been conclusively decided or adjusted, and that whatever title the State may hereafter acquire will

enure to said County of Calhoun and its grantees, and is contracted to be sold to your orator, as hereinafter set forth, and is also included in the decree hereinbefore referred to.

7 Your orator shows that before said land' described in Schedule A were patented to the State of Iowa, and whilst the title thereto still remained in the United States, the said County of Calhoun entered into a contract with the American Emigrant Company for a sale of the said swamp-lands and the swamp-land claim and interest of said County of Calhoun, which contract was duly ratified and approved by a vote of the duly-qualified voters of said county. A copy of the said contract is hereto annexed, marked "Exhibit D," and made a part of this bill.

Your orator shows that by the express terms of said contract it was stipulated that no taxes were to be assessed or levied on any of said lands until after said lands should be conveyed to the American Emigrant Company upon their request. Your orator shows that on the first day of April, 1863, the board of supervisors of said Calhoun County

8 did execute the form of conveyance of said lands to the American Emigrant Company, but that said form of conveyance provided and recited that said deed was executed as an escro*ved*, & was to be delivered to the clerk of the district court of said county, who was authorized to deliver the same to the American Emigrant Company whenever the said company should execute a mortgage back to the county conditioned to secure the full performance of said contract of Dec. 12th, 1861. Your orator shows that no such mortgage was executed by the American Emigrant Company; that said deed was recorded in the office of recorder of deeds in said county, on the day of , 18 . Your orator shows that the general agent of the American Emigrant Company, F. C. D. McKay, then managing the affairs of said company, died about the day of , and that by reason of his decease is not advised and cannot disclose by what means or agency or through whom said deed was filed for record.

9 Your orator shows that after the death of said F. C. D. McKay, to wit, in April, 1869, the County of Calhoun commenced its suit in the dist. court of said county, to cancel and set aside said contract marked "Exhibit B," aforesaid; that suit was afterwards, on the petition of your orator, transferred to the circuit court of the United States for the district of Iowa; that said County of Calhoun in her petition and amended and substituted petition filed in said cause charged that said deed had never been delivered to the American Emigrant Company, that the company had come into possession of said lands wrongfully, and had never performed their original contract with said county, and further charged that the deed when signed by the officers of the board of supervisors was, by order of the board, delivered to the clerk of the district court of Calhoun County, an escrow, to be delivered to the American Emigrant Company when and not until the company should

10 execute and deliver to the county a mortgage upon said lands, conditioned that the company should fully and in all respects fulfill and perform the terms, conditions, and obligations of their contract; and further charged that no such mortgage was ever executed by the company, and that the possession of the deed by the company was by some means unknown to the county, but was unauthorized and fraudulent. The bill further charged that said deed was never in manner sanctioned, ratified, or approved by the county, but that the county had uniformly resisted and maintained that the possession of said deed by the company was unauthorized & wrongful, and that the title to said land was still in the county, and that, so maintaining, the county author-

ities charged with the duty of levying and assessing and collecting taxes had never assessed the said lands or levied taxes thereon.

Your orator avers that said county authorities had not assessed said lands or levied taxes thereon, as charged, and that they had not
11 so assessed said lands in pursuance of the express directions and orders of the board of supervisors of said county of Calhoun, as petitioner is advised and believes.

Your orator shows that, upon issue joined upon the allegations of said complainant in the suit aforesaid, *that* a large number of depositions were taken by the said County of Calhoun to make good said allegations, and many hundred dollars of costs made.

Your orator shows that the board of supervisors of said county did, on the 11th day of March, 1872, authorize a settlement & compromise of said suit with your orator, & adopted certain resolutions, copies of which are hereto attached, marked "Exhibit E" and made a part of this petition, and that in pursuance of said authority, and agreement of said counsel for said county, a decree was rendered as hereinbefore set out, vesting the title to said lands in your orator.

Your orator expressly charges that the American Emigrant
12 Company paid the costs of said suit, and paid to said County of Calhoun, and to the attorney of said county, the several sums of money provided and mentioned in said terms of settlement, and that at the time of said settlement and the rendition of said decree the said lands described in Schedule A & C were not entered upon the assessment of Calhoun County, and had not been assessed or listed for taxation for the years 1870 & 1871, and had been withheld from taxation by the county authorities, upon the claim of said county that said lands in Schedule A belonged to and were the property of said county, and that the same and the lands described in Schedule C were not subject to taxation. Your orator shows that after the rendition of said decree, and the payment to the County of Calhoun of the several sums of money as provided in said settlement, the defendant W. T. Smith, the treasurer of said county, contriving to deprive your orator of the benefits of said
13 decree and to encumber said lands, did on or about the day of July, 1872, cause said lands in Schedule A & C to be listed and entered upon the tax duplicates of the year 1870 and 1871, and pretended to extend a computation of taxes, interest, penalty, and costs thereon, according to the rates of levy for said years, amounting in the aggregate to $3,552.78. And that said treasurer has advertised said lands for sale to satisfy said pretended levy of taxes, and proposes to sell the same on the 7th day of October, 1872. Your orator avers that said act of said treasurer is without authority of law; that said lands had not been omitted from the tax-lists of the years 1870 & 1871 through any omission, oversight, or mistake; that said lands described in Schedule A were not assessed by said county, because the county claimed the same as county property, and said lands in Schedule C were still the property of the United States, and that the settlement with said
14 county, whereby plff. took a decree of title to said lands, was made with a full understanding, by both said county and your petitioner, that no taxes were payable on said lands for said years.

Your orator avers that if said county treasurer and said County of of Calhoun are not prevented by the process of this court, *that* said lands will be sold for said pretended delinquent taxes, interest, penalty, & costs, and a cloud created upon your orator's right and title to the same. Your orator therefore prays that said County of Calhoun, and said defendant W. T. Smith, the treasurer of said county, may be at once

restrained by an injunction of this court from proceeding to sell said lands for said pretended taxes, or in any manner to enforce the payment of said pretended taxes; that your orators have a writ of subpœna requiring said defendants to appear and answer this bill of complaint, and that upon a final hearing hereof a decree may be entered de-
15 claring said pretended assessment and levy of taxes upon said lands to be illegal and void, and that the said County of Calhoun, its officers and agents, and the said county treasurer, and his successors in office, be forever enjoined from selling said lands, or in any manner enforcing the collection of said pretended taxes for the years 1870 & 1871, and that your orator have a decree for costs, and for such other, further, and full relief as in equity and good conscience your orator is entitled to receive.

(Signed) NOURSE, KAUFFMAN & HOLMES,
Attys. for Plaintiff.

THE STATE OF IOWA, *Polk County, ss:*

I, H. L. Skinner, being duly sworn according to law, do depose & say, that I am the gen'l land agent of complainant in Iowa, & have knowledge of the matters above stated, & that the same are true, as I believe.

(Signed) H. L. SKINNER,

16 Subscribed by the said H. L. Skinner, in my presence, and by him sworn to before me this 30th day of September, A. D. 1872.

(Signed) K. O. HOLMES,
[NOTARIAL SEAL.] *Notary Public.*

17 SCHEDULE A.

Additional assessments of "omitted" lands for the years 1870 *and* 1871.

Tracts marked with a ‡ after the part of the section were regularly assessed, and are on tax-list for '71. "†" after the number of acres denote fractions.

Owners.	Part of sec.	Section.	Acres.	Tax of 1870.	Tax of 1871.	Int. & costs.	Total.
CALHOUN TOWNSHIP.—TOWNSHIP 86, RANGE 31.							
American Emigrant Company.	S. E. S. W.	10	40	3 04	2 91	2 52	8 47
TOWNSHIP 86, RANGE 32.							
	N. W. N. E.	6	37†	2 83	2 73	2 35	7 91
	S. E. S. E.	36	40	3 04	2 91	2 52	8 47
	S. W. S. E.	36	40	3 04	2 91	2 52	8 47
	S. E. S. W.	36	40	3 04	2 91	2 52	8 47
	S. W. S. W.	36	40	3 04	9 61	2 52	8 47
TOWNSHIP 87, RANGE 33.							
	S. E. N. E.	4	40	3 04	2 91	2 52	8 47
	N. E. S. E.	4	40	3 04	2 91	2 52	8 47
	N. E. N. E.	6	54†	4 09	3 95	3 32	11 36
	N. W. N. E.	8	40	3 04	2 91	2 52	8 47
	S. W. N. W.	8	40	3 04	2 91	2 52	8 47
	N. E. N. W.	10	40	3 04	2 91	2 52	8 47

Schedule A—Continued.

Owners.	Part of sec.	Section.	Acres.	Tax of 1870.	Tax of 1871.	Int. & costs.	Total.
18	LINCOLN TOWNSHIP.—T. 89, R. 31.						
	N. W. S. E.	6	40	5 61	6 60	4 66	16 87
	S. W. S. E	6	40	5 61	6 60	4 66	16 87
	S. W. N. W.	8	40	5 61	8 82	4 99	19 42
	S. E. S. E.	8	40	5 61	8 82	4 99	19 42
	N. W. N. W.	10	40	5 61	6 63	4 66	16 90
	N. E. S. E.	18	40	5 61	7 35	4 77	17 73
	S. E. S. E.	18	40	5 61	7 35	4 77	17 73
	S. W. S. E.	18	40	5 61	7 35	4 77	17 73
	S. E. S. W.	18	40	5 61	7 35	4 77	17 73
	S. W. S. E	22	40	5 61	6 63	4 66	16 90
	N. E. N. W.	26	40	5 61	6 63	4 66	16 90
	N. W. N. W.	26	40	5 61	6 63	4 66	16 90
	S. E. N. W.	26	40	5 61	6 63	4 66	16 90
	N. W. S. W	26	40	5 61	6 63	4 66	16 90
	S. W. S. W.	28	40	5 61	6 63	4 66	16 90
	N. E. N. E	30	40	5 61	6 63	4 66	16 90
	N. W. N. E.	30	40	5 61	6 63	4 66	16 90
	S. W. S. E	30	40	5 61	6 63	4 66	16 90
	N. E. N. W	30	40	5 61	6 63	4 66	16 90
	N. W. S. W	32	40	5 61	6 63	4 66	16 90
	S. W. S. W	32	40	5 61	6 63	4 66	16 90
	S. W. N. W.	32	40	5 61	6 63	4 66	16 90
	N. W. N. E.	36	40	5 61	6 63	4 66	16 90
	S. W. N. E.	36	40	5 61	6 63	4 66	16 90
	S. E. N. W.	36	40	5 61	6 63	4 66	16 90
	N. E. S. W.	36	40	5 61	6 63	4 66	16 90
	S. W. S. W.	36	40	5 61	6 63	4 66	16 90
19	TOWNSHIP 88, RANGE 32.						
	S. W. S. E.	2	40	5 61	6 63	4 66	16 90
	N. E. S. E	32	40	5 61	6 63	4 66	16 90
	GREENFIELD TP.—T. 87, R. 31.						
	N. E. S. E.	8	40	3 04	4 23	2 71	10 98
	S. E. S. E.	8	40	3 04	4 23	2 71	10 98
	TOWNSHIP 88, RANGE 31.						
	N. E. S. E.	4	40	5 61	4 23	4 31	14 14
	N. W. S. E	4	40	5 61	4 23	4 31	14 14
	S. E. S. E	4	40	5 61	4 23	4 31	14 14
	S. W. S. E.	4	40	5 61	4 23	4 31	14 14
	N. E. S. W.	10	40	5 61	4 19	4 31	14 11
	S. E. S. W	10	40	5 61	4 19	4 31	14 11
	S. E. S. E.	10	40	5 61	4 19	4 31	14 11
	S. W. S. E.	10	40	5 61	4 19	4 31	14 11
	N. E. N. E.	12	40	5 61	4 19	4 31	14 11
	S. E. N. E.	12	40	5 61	4 19	4 31	14 11
	N. E. S. E	12	40	5 61	4 19	4 41	14 11
	N. W. S. E.	12	40	5 61	4 19	4 31	14 11
	N. W. N. W.	14	40	5 61	4 19	4 31	14 11
	S. W. N. W.	14	40	5 61	4 19	4 31	14 11
	SHERMAN TP.—T. 88, R. 33.						
	S. E. S. E.	4	40	4 71	8 29	4 35	17 29
	TOWNSHIP 89, RANGE 32.						
	N. fr. ¼ N. W.	2	62¼	7 32	12 83	6 66	26 81
	S. W. N. W	2	40	4 71	8 23	4 35	17 29
	N. W. S. W.	2	40	4 71	8 23	4 35	17 29
	S. W. S. W.	2	40	4 71	8 23	4 35	17 29

Schedule A—Continued.

Owners.	Part of sec.	Section.	Acres.	Tax of 1870.	Tax of 1871.	Int. & costs.	Total.
20	S. E. N. E	4	40	4 71	8 23	4 35	17 29
	S. W. N. W	4	40	4 71	8 23	4 35	17 29
	N. fr. ¼ N. E	6	71†	8 42	14 74	7 63	30 79
	S. W. N. W	6	46†	5 47	9 64	5 04	20 15
	N. W. S. W	6	40	4 71	8 23	4 35	17 29
	S. E. S. W	6	40	4 71	8 23	4 35	17 29
	S. E. S. E	6	40	4 71	8 23	4 35	17 29
	S. W. S. E	6	40	4 71	8 23	4 35	17 29
	N. W. N. E	8	40	4 71	8 23	4 35	17 29
	S. W. N. E	8	40	4 71	8 23	4 35	17 29
	N. E. N. W	8	40	4 71	8 23	4 35	17 29
	N. W. N. W	8	40	4 71	8 23	4 35	17 29
	S. E. N. W	8	40	4 71	8 23	4 32	17 29
	N. E. S. E	8	40	4 71	8 23	4 35	17 29
	N. W. S. E	8	40	4 71	8 32	4 35	17 29
	S. E. S. E	8	40	4 71	8 23	4 35	17 29
	S. W. S. E	8	40	4 71	8 23	4 35	17 29
	S. W. S. W	8	40	4 71	8 23	4 35	17 29
	N. E. N. E	10	40	4 71	8 23	4 35	17 29
	S. W. N. W	10	40	4 71	8 23	4 35	17 29
	N. W. S. W	10	40	4 71	8 23	4 35	17 29
	S. W. S. W	10	40	4 71	8 23	4 35	17 29
	S. E. S. W	10	40	4 71	8 23	4 35	17 29
	N. E. S. E	10	40	4 71	8 23	4 35	17 29
	S. E. S. E	10	40	4 71	8 23	4 35	17 29
	N. W. N. E	12	40	4 71	8 33	4 35	17 29
	N. E. N. W	12	40	4 71	8 23	4 35	17 29
	S. E. N. E	14	40	4 71	8 23	4 35	17 29
	N. E. N. W	14	40	4 71	8 23	4 35	17 29
	S. E. N. W	14	40	4 71	8 23	4 35	17 29
	S. W. N. W	14	40	4 71	8 23	4 35	17 29
	N. E. S. W	14	40	4 71	8 23	4 35	17 29
	N. W. S. W	14	40	4 71	8 23	4 35	17 29
	S. W. S. W	14	40	4 71	8 23	4 35	17 29
	N. E. N. E	18	40	4 71	8 23	4 35	17 29
	S. E. N. E	18	40	4 71	8 23	4 35	17 29
	N. E. N. W	18	40	4 71	8 23	4 35	17 29
	S. E. N. W. ¼	18	40	4 71	4 12	3 73	12 56
	N. W. S. E. ¼	18	40	4 71	4 12	3 73	12 56
	S. E. S. E. ¼	18	40	4 71	4 12	3 73	12 56
	S. W. S. E. ¼	18	40	4 71	4 12	3 73	12 56
	S. E. S. W	18	40	4 71	8 23	4 35	17 29
	S. W. S. W	18	40	4 71	8 23	4 35	17 29
	N. E. N. E	20	40	4 71	.....	3 12	7 83
	N. W. N. E	20	40	4 71	.....	3 12	7 83
	S. W. N. E	20	40	4 71	.....	3 12	7 83
	N. W. N. W	20	40	4 71	8 23	4 35	17 29
	S. W. N. W	20	40	4 71	8 23	4 35	17 29
	N. W. S. E	20	40	4 71	8 23	4 35	17 29
	S. E. S. E	20	40	4 71	8 23	4 35	17 29
	N. E. S. W	20	40	4 71	8 23	4 35	17 29
	N. W. S. W	20	40	4 71	8 23	4 35	17 29
	S. E. S. W	20	40	4 71	8 23	4 35	17 29
	S. W. S. W	20	40	4 71	8 23	4 35	17 29
	N. E. N. E	22	40	4 71	8 23	4 35	17 29
	N. W. N. E	22	40	4 71	8 23	4 35	17 29
	S. E. N. E	22	40	4 71	8 23	4 35	17 29
	N. W. N. W	22	40	4 71	8 23	4 35	17 29
	S W. N. W	22	40	4 71	8 23	4 35	17 29
	N. E. S. E	22	40	4 71	8 23	4 35	17 29
	N. W. S. W	22	40	4 71	8 23	4 35	17 29
	S. E. S. W	22	40	4 71	8 23	4 35	17 29
	S. W. S. W	22	40	4 71	8 23	4 35	17 29
	N. E. N. E	24	40	4 71	8 23	4 35	17 29
	S. E. N. E	24	40	4 71	8 23	4 35	17 29
	N. W. N. W	24	40	4 71	8 23	4 35	17 29
	N. W. S. E	24	40	4 71	8 23	4 35	17 29
	S. W. S. E	24	40	4 71	8 23	4 35	17 29
	S. E. S. W	24	40	4 71	8 23	4 35	17 29
	N. W. N. E	26	40	4 71	8 23	4 35	17 29
	N. W. N. W	26	40	4 71	8 23	4 35	17 29
	S. E. N. W	26	40	4 71	8 23	4 35	17 29
	S. W. N. W	26	40	4 71	8 23	4 35	17 29
	N. W. N. W	28	40	4 71	8 23	4 35	17 29
	Lot No. 2	28	58†	6 31	11 02	5 76	23 09
	Lot No. 3	28	65†	7 66	13 36	6 94	27 96
	Lot No. 4	28	38†	4 44	7 78	4 11	16 33
	Lot No. 5	28	33*	3 90	6 86	3 63	13 39
	Lot No. 6	28	47*	5 47	9 70	5 04	20 21
	N. W. N. W	30	46*	5 47	9 55	5 02	20 04

Schedule A—Continued.

Owners.	Part of sec.	Section.	Acres.	Tax of 1870.	Tax of 1871.	Int. & costs.	Total.
	S. W. S. E	30	40	4 71	8 23	4 35	17 29
	N. E. S. W	30	40	4 71	8 23	4 35	17 29
	N. W. S. W	30	46*	5 47	9 50	5 00	19 97
	S. E. S. W	30	40	4 71	8 23	4 35	17 29
	S. W. S. W	30	46	5 47	9 50	5 00	19 97
23	S. E. N. E	32	40	4 71	8 23	4 35	17 29
	S. W. N. E	32	40	4 71	8 23	4 35	17 29
	S. E. N. W	32	40	4 71	8 23	4 35	17 29
	S. W. N. W	32	40	4 71	8 23	4 35	17 29
	Lot 1	32	37*	4 35	7 64	4 03	16 02
	N. E. N. W	36	40	4 71	8 23	4 35	17 29
	S. W. N. W.‡	36	40	4 71	8 23	4 35	17 29
	N. W. S. W	36	40	4 71	8 23	4 35	17 29

BUTLER TP.—T. 89, R. 33.

	S. E. S. E	2	40	4 71	8 23	4 35	17 29
	N. W. S. W	4	40	4 71	8 23	4 35	17 29
	S. W. S. W	4	40	4 71	8 23	4 35	17 29
	S. E. S. E	6	40	4 71	8 23	4 35	17 29
	S. W. S. E	6	40	4 71	8 23	4 35	17 29
	N. W. S. W	6	40	4 71	8 23	4 35	17 29
	S. E. S. W	6	40	4 71	8 23	4 35	17 29
	S. W. S. W	6	40	4 71	8 23	4 35	17 29
	S. E. N. E	8	40	4 71	8 23	4 35	17 29
	S. W. N. E	8	40	4 71	8 23	4 35	17 29
	N. E. N. W	8	40	4 71	8 23	4 35	17 29
	N. W. N. W	8	40	4 71	8 23	4 35	17 29
	N. E. S. E	8	40	4 71	8 23	4 35	17 29
	N. E. S. W	8	40	4 71	8 23	4 35	17 29
	N. W. S. W	8	40	4 71	8 23	4 35	17 29
	N. W. S. W	10	40	4 71	8 23	4 35	17 29
	N. E. N. W.‡	12	40	4 71	8 23	4 35	17 29
	S. W. N. W.‡	12	40	4 71	8 23	4 35	17 29
	N. W. S. W.‡	12	40	4 71	8 23	4 35	17 29
24	S. W. S. W.‡	12	40	4 71	8 23	4 35	17 29
	N. E. N. E	14	40	4 71	8 23	4 35	17 29
	N. E. S. E	14	40	4 71	8 23	4 35	17 29
	S. E. S. E	14	40	4 71	8 23	4 35	17 29
	N. W. S. W	14	40	4 71	8 23	4 35	17 29
	S. W. S. W	14	40	4 71	8 23	4 35	17 29
	N. W. N. E	18	40	4 71	8 23	4 35	17 29
	S. W. N. E	18	40	4 71	8 23	4 35	17 29
	N. E. N. W	18	40	4 71	8 23	4 35	17 29
	N. W. N. W	18	40	4 71	8 23	4 35	17 29
	S. E. N. W	18	40	4 71	8 23	4 35	17 29
	S. W. N. W	18	41*	4 95	8 52	4 55	18 02
	N. E. S. E	18	40	4 71	8 23	4 35	17 29
	N. W. S. E	18	40	4 71	8 23	4 35	17 29
	S. E. S. E	18	40	4 71	8 23	4 35	17 29
	S. W. S. E	18	40	4 71	8 23	4 35	17 29
	N. E. S. W	18	40	4 71	8 23	4 35	17 29
	N. W. S. W	18	41*	4 94	8 52	4 55	18 01
	S. E. S. W	18	40	4 71	8 23	4 35	17 29
	S. W. S. W	18	41*	4 94	8 52	4 55	18 01
	N. E. N. E	20	40	4 71	6 17	3 04	13 92
B. Brandon	S. W. S. W	20	40	4 71	.....	3 12	7 92
Am. Em't Co	S. E. S. E	20	40	4 71	6 17	3 04	13 83
	S. E. N. E	22	40	4 71	6 17	3 04	13 92
	N. W. N. W	22	40	4 71	6 17	3 04	13 92
	S. E. N. W	22	40	4 71	6 17	3 04	13 92
	S. W. S. E	22	40	4 71	6 17	3 04	13 92
	S. E. S. W	22	40	4 71	6 17	3 04	13 92
25	N. E. N. W	24	40	4 71	6 17	3 04	13 92
	S. E. N. W	24	40	4 71	6 17	3 04	13 92
	N. E. S. E	24	40	4 71	6 17	3 04	13 92
	S. E. S. E	24	40	4 71	6 17	3 04	13 92
	S. W. S. E	24	40	4 71	6 17	3 04	13 92
	S. E. S. W	24	40	4 71	6 17	3 04	13 92
	N. E. N. E	26	40	4 71	8 23	4 35	17 29
	N. W. N. E	26	40	4 71	8 23	4 35	17 29
	S. E. N. E	26	40	4 71	8 23	4 35	17 29
	S. W. N. E	26	40	4 71	8 23	4 35	17 29

Schedule A—Continued.

Owners.	Part of sec.	Section.	Acres.	Tax of 1870.	Tax of 1871.	Int. & costs.	Total.
	N. E. N. W	26	40	4 71	8 23	4 35	17 29
	N. W. N. W	26	40	4 71	8 23	4 35	17 29
	N. W. N. W	32	40	4 71	8 23	4 35	17 29
	S. E. S. W	34	40	4 71	8 23	4 35	17 29
	S. W. S. W	34	40	4 71	8 23	4 35	17 29
	WILLIAMS TP.—T. 88, R. 34.						
	Lot 5	2	40	2 75	4 83	2 62	10 20
	N. E. N. E	14	40	2 75	4 83	2 62	10 20
	36, 31.						
	S. E. S. W	10	.....	....	.....	.....	.....

26 *Exhibit B.—Filed May* 20, 1872.

CALHOUN COUNTY, IOWA,
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 125. Ch'y.

In the circuit court of the United States, district of Iowa.

In this cause it is agreed that a decree shall be entered at the May term, 1872, of the said circuit court of the United States, of which the following hereto attached is the *the* form and matter agreed upon, and that the county of Calhoun shall make to the American Emigrant Company a deed within thirty days from date for the lands described in memoranda hereto attached, being $509\frac{23}{100}$ acres of scrip-lands, so called.

This stipulation is made in pursuance of the authority of a resolution of the board of supervisors, adopted March 11, 1872, and upon consideration of the sums of money therein specified, the receipt whereof is hereby acknowledged.

27 *Decree.*—B continued.

CALHOUN COUNY, IOWA,
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 125. Ch'y.

In the circuit court of the United States.

And now this cause coming on for final hearing, upon the stipulation of the parties it is ordered, adjudged, and decreed that the bill of the complainant be, and the same is hereby, dismissed as upon the merits on final hearing, and that said dismissal shall forever operate as a bar and an estoppel against the complainant to set up any title or right to the lands or funds in controversy in this suit, or to maintain any suit or proceedings, either at law or in equity, in anywise impeaching the title of

the American Emigrant Company to the lands in controversy in this suit or the lands entered in the name of said county, with the swamp-land indemnity scrip, and said Calhoun County shall convey to defendant said last-named lands as hereinafter described, and said
28 county shall not in any manner impeach the validity of the contract between Calhoun County and the American Emigrant Company dated Dec. 12, 1861, or of the deed executed to said American Emigrant Company or in trust for said company, dated Sept. 14, 1863.

It is further ordered and adjudged that the American Emigrant Company pay the costs of this suit, taxed at $, and that execution issue therefor in favor of said complainant.

DESCRIPTION OF LANDS TO BE DEEDED—TO WIT, SCRIP-LANDS.

W. ½ S. W.	7,	99, 30	All in Kossuth County.
N. E. S. W.	7,	" "	
W. ½ N. W.	7,	" "	
N. E. N. W.	"	" "	
E. ½ N. E.	7,	100, 30	
W. ½ N. W.	8,	" "	
W. ½ N. E.	"	" "	
N. W.	9,	" "	
Lot 6,	17,	" "	

(Signed) WITHROW & WRIGHT & C. C. NOURSE,
Solicitors for the American Emigrant Company.

D. D. MIRACLE,
Solicitor for Plaintiff.

29 EXHIBIT C.

A list of lands in Calhoun County, Iowa, selected as swamp-lands under the act of Sept. 28, 1850, but which have not been approved and patented by the General Government.

N. E. ¼ of N. E. ¼	2	87	33
N. W. ¼ of N. W. ¼	2	"	"
N. E. ¼ of N. E. ¼	4	"	"
N. W. ¼ of N. W. ¼	4	"	"
N. E. ¼ of S. W. ¼	6	88	32
S. E. ¼ of S. W. ¼	6	"	"
W. ½ of S. W. ¼	6	"	"
N. E. ¼ of S. E. ¼	22	"	"
S. W. ¼ of S. E. ¼	22	"	"
Lot 9 of	6	88	33

30 EXHIBIT D.

Memoranda of agreement, made this 12th day of Dec., 1861, between the County of Calhoun, in the State of Iowa, of the first part, and The American Emigrant Company by F. C. D. McCay, their general agent for the State of Iowa, of Des Moines, Iowa, of the second part, witnesseth :

This agreement, made this 12th day of December, A. D. 1861, between The County of Calhoun, in the State of Iowa, of the first part, and The American Emigrant Company by F. C. D. McKay, their general agent

for the State of Iowa, of Des Moines, Iowa, of the second part, witnesseth:

The party of the second part agrees & proposes to make for said county the improvements in Schedule A, hereto annexed, at the times and in the manner therein stated; in consideration therefor the party of the first part agrees to donate, and does hereby donate, all the swamp-lands of said county and all the proceeds thereof and the funds thereof of whatsoever the same may consist, except so much of said lands are unclaimable, to the making of said improvements in Schedule A mentioned.

31 It is also further and separately agreed by the party of the second part to make for the said county all the improvements in Schedule B, hereto annexed, at the times and in the manner therein stated; and in consideration thereof the party of the first part agrees to sell and convey to the party of the second part, or to their assigns, all the unclaimable lands of said county and all the proceeds and funds arising from such unclaimable swamp-lands. The party of the second part takes said lands, all of them, & the said proceeds and funds, subject to all legal charges existing against the same; & further agrees to release the county and the State of Iowa and the United States from all claims & liability that they or either of them may be subject to on account of the reclaiming said lands or the draining of any of said lands, & from all the conditions of the act of Congress, Sept. 28, 1850, relating to swamp-lands. From time to time as the work of said improvement progresses, whenever requested by the party of the second part or their agent,

32 parcels of said land as may be needed by the party of the second part for its uses and purposes shall be conveyed by the party of the first part to them; provided, however, that the county shall not make any such conveyance except so far as the board of supervisors shall deem prudent & safe to convey, keeping the county safe and indemnified for the fulfilment & completion improvements, and only on the request of the second party.

The party of the first part shall assign and convey in due form to the party of the second part, or their assigns, the claims of said county in the State of Iowa & on the United States for all swamp-lands located by land-warrants, or sold for cash, under the authority of the United States, in such form and at such times, if requested, as to enable the party of the second part to make a final settlement with said county and the United States immediately, so as to get the immediate use of

33 the proceeds thereof in time to locate of the lands in the vicinity of Calhoun County for the use of the said Emigrant Company; but in such case the party of the second part shall make, execute, and deliver a bond in a penal sum satisfactory to the board of supervisors of said county, executed by resident securities of the State of Iowa, also satisfactory to said board, conditioned that said improvements in said schedules shall be fully completed according to the terms of said agreement.

This agreement is not to be in force unless it shall be approved by the people of said county in the manner provided by law, nor shall it then affect the rights of any purchaser of any of said swamp-lands who hold the same either under a land-warrant entry or a cash purchase.

Every deed of conveyance of any of said lands made by said party of the second part is to contain a condition by which the purchaser is to forfeit all title to said lands unless he shall effect an actual settle-

34 ment thereon within a limited period, to be stated in such deed. The party of the first part is not to assess any taxes against said

lands until after the time they shall be conveyed on the request of the party of the second part as aforesaid.

The foregoing agreement does not in any way include the four hundred acres of land hereinafter mentioned, but the same are excepted from the foregoing provisions. Whenever the swamp-lands of said county shall be all conveyed to said company, and any agent of the said party of the second part notified thereof, then, in three months thereafter, the party of the second part, or its agent, shall select the four hundred acres of said lands so excepted from this agreement as aforesaid, and notify the board of supervisors of said county at their next meeting thereafter of the lands so selected; and the said board shall then convey said four hundred acres to the party of the second part, or their assigns, & leave the deed with the treasurer of said county, executed in due form of law, and notify
35 said agent thereof; and in thirty days after such notice the party of the second part will pay into said treasury four hundred dollars to the credit of said county, at which time said deed shall be delivered to said agent for the party of the second part.

On the completion of all the works and jobs mentioned in this agreement & schedule, or so soon thereafter as the county shall receive the title to all of said lands, the county is to convey, & the party of the second part is to take, the title to said lands.

In witness whereof said parties have hereunto set their hands & seals this eighteenth day of Dec., 1861.

{ SEAL OF CALHOUN CO., IOWA. } LUCIUS C. MOREY,
President of the Board of Supervisors.
THE AMERICAN EMIGRANT COMPANY,
By F. C. D. MCKAY,
Their General Agent for the State of Iowa.

Attest:
H. C. CRAWFORD,
Clk. of the Board of Supervisors.

36 EXHIBIT E.

THE STATE OF IOWA,
Calhoun County:

MARCH 11, 1872.

The board of supervisors met in special session, according to a request of a majority of the board of supervisors and notice by the county auditor, in order (according to call for special session) to consider matters pertaining to the suit of Calhoun County against the American Emigrant Company.

Resolved by the board of supervisors of Calhoun County, Iowa, in special session, That D. D. Miracle, atty. for said county, having the management of the suit of Calhoun County against the American Emigrant Company now pending in the circuit court of the United States, be, and he is hereby, authorized, instructed, and directed to compromise said suit on the part of said county, and consent and agree, on the part of said county, to a decree vesting and declaring the title to all
37 the swamp-lands and swamp land interest of said county now in dispute in said suit to be in said American Emigrant Company, upon the following basis and terms, to-wit:

The said American Emigrant Company is to pay to the said county the sum of twenty-three hundred dollars, in cash, and pay all costs and expenses of said suit, including the said D. D. Miracle's fees, except five

hundred dollars, which the said county shall pay, in addition to the three hundred dollars already advanced by the said county to the said Miracle; and this resolution and action of the said board shall be his sufficient authority for so adjusting said suit.

In order to carry out the provisions of the foregoing resolution, the agents of the American Emigrant Company will deposit in the First National Bank of Des Moines the amount due the county, to-wit, eighteen hundred dollars, to the credit of Calhoun County, Iowa, and subject to the order of W. T. Smith, the treasurer thereof, or
38 his successors in office, and the amount of five hundred dollars to be paid to D. D. Miracle, making, in all, twenty-three hundred dollars. The board of supervisors make it a condition of the foregoing resolutions that a compl*y*ance shall be made therewith by the American Emigrant Company on or before the 29th day of March, 1872. And

Be it further resolved, That the clerk of the board of supervisors be, and he hereby is, directed to furnish D. D. Miracle with a certified copy of this resolution, with directions and instructions to act upon the same, & to use all proper means to adjust and conclude said suit upon the basis herein indicated, and report his doings in the premises to this board without delay.

The foregoing resolution was adopted.

(Endorsed:) Filed Oct. 3d, 1872. George B. Corkhill, clerk.

39 The foregoing petition is endorsed as follows, to wit:

KEOKUK, IOWA, *Oct. 2nd*, 1872.

This application for injunction is set down for hearing before the circuit court on the 2nd day of the next term thereof, or so soon thereafter as said court may be able to hear the same. The complainant will give notice to the respondents accordingly. The clerk will in the mean time issue a temporary restraining-order to the respondents, commanding them to proceed no farther to sell said lands for the taxes aforesaid, nor in any manner to enforce the payment of said taxes pending the present application.

(Signed) J. M. LOVE, *Dist. Judge.*

40 And on the same day, to wit, Oct. 3d, 1872, there was issued from said clerk's office a subpœna in chancery against Calhoun County, Iowa, and W. T. Smith, treasurer of Calhoun County, Iowa; which said subpœna is in words and figures following, to wit:

41 *Subpœna in chancery.*

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to Calhoun County, Iowa, and W. T. Smith, treasurer of Calhoun County, Iowa:

We command you, and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the second Monday of May, it being the 12th day of May next, (A. D. 1873,) to answer to the bill of complaint to the American Emigrant Company this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa. Returnable to the November rule-day, it being Monday, the fourth day of November, A. D. 18772.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the U. S., at Des Moines, this the 3rd day of October, A. D. 1872, and of the Independence the ninety-sixth year.

[L. S.] (Signed) GEORGE B. CORKHILL, *Clerk.*

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[L. S.] (Signed) GEORGE B. CORKHILL, *Clerk.*

42 And afterwards, to wit, on the 17th day of October, 1872, said subpœna was returned by the marshal of said district, and filed in said clerk's office, with his return of service endorsed thereon, which said return is in words and figures following, to wit:

43 (Indorsed:) No. . Subpœna in chancery. Circuit court of the United States, district of Iowa. vs. . Returnable to rule-day first Monday in , A. D. 187 . , clerk. Filed Oct. 17, A. D. 1872. George B. Corkhill, clerk.

This writ came into my hands for service on the fourth day of Oct., A. D. 1872, and I served the same on the within-named Calhoun Co. & W. T. Smith Oct. 5, 1872, by reading the same to Frances E. Stevenson, auditor of Calhoun Co., and W. T. Smith, and by delivering a true copy to each of them, in the county of Calhoun and State of Iowa.

(Signed) PETER MELENDY,
U. S. Marshal,
V. E. ROWLEY,
Special Deputy.

Marshal's fees: Mileage, 150 miles, $9.00; service on two, $4.00; copy, $2.00—paid by plff., $15.00.

44 On the 3rd day of October, A. D. 1872, there was issued from said clerk's office a restraining-order against Calhoun County, W. T. Smith, treasurer, et al., which said restraining-order is in words and figures following, to wit:

45 UNITED STATES OF AMERICA,
District of Iowa:

The President of the United States of America to Calhoun County, Iowa, and W. T. Smith, treasurer of said Calhoun County, their clerks, agents, attorneys, servants, and workingmen, greeting:

Whereas the American Emigrant Company has exhibited its bill before the judges of our circuit court of the United States for the district of Iowa, on the 2nd day of October, A. D. 1872, against the said Calhoun County and W. T. Smith, treasurer of said Calhoun County, praying to be relieved touching the matters therein complained of; and whereas upon reading the said bill and hearing the said motion it was ordered that said motion be set down for hearing before said court on the second day of the October term, A. D. 1872, of said court, it being the 15th

day of October, A. D. 1872, at Des Moines, in said district, or as soon thereafter as said court may be able to hear the same, it was
46 further ordered by said court that in the mean time, and pending said motion, that you, the said Calhoun County and W. T. Smith, thereof, be restrained from doing all the matters and things, from the doing of which you are prayed to be restrained in said bill:

We, therefore, in consideration thereof, do hereby command you, and each of you, that from and immediately after the receipt and notice of this our order by you, or any of you, that you refrain from proceeding to sell or from selling the lands hereinafter described for the taxes upon said hereinafter described lands levied for the years 1870 & 1871, or from in any manner enforcing the payment of said taxes on said lands described as follows, to wit:

TOWNSHIP 86, RANGE 31.

S. E. S. W. sec. 10.

TOWNSHIP 86, RANGE 32.

N. W. N. E. sec. 6.
S. E. S. E. " 36.
S. W. S. E. " 36.
S. E. S. W. sec. 36.
S. W. S. W. " 36.

7

TOWNSHIP 87, RANGE 33.

S. E. N. E. sec. 4.
N. E. S. E. " 4.
N. E. N. E. " 6.
N. W. N. E. sec. 8.
S. W. N. W. " 8.
N. E. N. W. " 10.

TOWNSHIP 89, RANGE 31.

N. W. S. E. sec. 6.
S. W. S. E. " 6.
S. W. N. W. " 8.
S. E. S. E. " 8.
N. W. N. W. " 10.
N. E. S E. " 18.
S. E. S. E. " 18.
S. W. S. E. " 18.
S. E. S W. " 18.
S. W. S. E. " 22.
48 S. W. S. W. sec. 32.
S. W. N. W. " 32.
N. W. N. E. " 36.
S. W. N. E. " 36.
N. E. N. W. sec. 26.
N. W. N. W. " 26.
S. E. N. W. " 26.
N. W. S. W. " 26.
S. W. S. W. " 28.
N. E. N. E. " 30.
N. W. N. E. " 30.
S. W. S. E. " 30.
N. E. N. W. " 30.
N. W. S. W. " 32.
S. E. N. W. " 36.
N. E. S. W. " 36.
S. W. S. W. " 36.

TOWNSHIP 88, RANGE 32.

S. W. S. E. sec. 2.
N. E. S. E. sec. 32.

TOWNSHIP 87, RANGE 31.

N. E. S. E. sec. 8.
S. E. S. E. sec. 8.

TOWNSHIP 88, RANGE 31.

N. E. S. E. sec. 4.
N. W. S. E. " 4.
S. E. S. E. " 4.
S. W. S. E. sec. 4.
N. E. S. W. " 10.
S. E. S. W. " 10.

TOWNSHIP 88, RANGE 31.

S. E. S. E. sec. 10.
S. W. S. E. sec. 10.
N. E. N. E. " 12.
S. E. N. E. " 12.
N. E. S. E. sec. 12.
N. W. S. E. " 12.
N W. N. W. " 14.
S. W. N. W. " 14.

49

TOWNSHIP 88, RANGE 33.

S. E. S. E. sec. 4.

TOWNSHIP 89, RANGE 32.

N. fr. ½ N. W. sec. 2.
S. W. N. W. " 2.
N. W. S. W. " 2.
S. W. S. W. " 2.
S. E. N. E. " 4.
S. W. N. W. " 4.
N. fr. ½ N. E. " 6.
S. W. N. W. " 6.
N. W. S. W. sec. 6.
S. E. S. W. " 6.
S. E. S. E. " 6.
S. W. S. E. " 6.
N. W. N. E. " 8.
S. W. N. E. " 8.
N. E. N. W. " 8.
N. W. N. W. " 8.

TOWNSHIP 89, RANGE 32.

50 N. W. S. W. sec. 10.
S. W. S. W. sec. 10.
S. E. S. W. " 10.
N. E. S. E. " 10.
S. E. N. W. sec. 8.
N. E. S. E. " 8.
N. W. S. E. " 8.
S. E. S. E " 8.
S. E. S. E. " 10.
N. W. N. E. " 12.
N. E. N. W. " 12.
S. E. N. E. " 14.
N. E. N. W. " 14.
S. E. N. W " 14.
S. W. S. E. sec. 8.
S. W. S. W. " 8.
N. E. N. E. " 10.
S. W. N. W. " 10.
S. W. N. W. " 14.
N. E. S. W. " 14.
N. W. S. W. " 14.
S. W. S. W. " 14.
N. E. N. E. " 18.
S. E. N. E. " 18.
N. E. N. W. " 18.
S. E. N. W. " 18.
N. W. S. E. " 18.

TOWNSHIP 89, RANGE 32.

S. E. S. E. sec. 18.
S. W. S. E. " 18.
S. E. S. W. " 18.
S. W. S. W. " 18.
51 S. W. N. W. sec. 20.
N. W. S. E. " 20.
S. E. S. E. " 20.
N. E. S. W. " 20.
N. W. S. W. " 20.
S. E. S. W. " 20.
S. W. S. W. " 20.
N. E. N. E. " 22.
N. W. N. E. " 22.
S. E. N. E. " 22.
N. E. N. E. sec. 20.
N. W. N. E. " 20.
S. W. N. E. " 20.
N. W. N. W. " 20.
N. W. N. W. " 22.
S. E. N. W. " 22.
N. E. S. E. " 20.
N. W. S. W. " 22.
S. E. S. W. " 22.
S. W. S. W. " 22.
N. E. N. E. " 24.
S. N. S. E. " 24.
N. W. N. W. " 24.

TOWNSHIP 89, RANGE 32.

N W. S. E. sec. 24.
S. W. S. E. " 24.
S. E. S. W. " 24.
N. W. N. E. " 26.
52 Lot 2, sec. 28.
" 3, " 28.
" 4, " 28.
" 5, " 28.
" 6, " 28.
N. W. N. W. " 30.
S. W. S. E. " 30.
N. E. S. W. " 30.
N. W. S. W. " 30.
S. E. S. W. " 30.
N. W. N. W. sec. 26.
S. E. N. W. " 26.
S. W. N. W. " 26.
N. W. N. W. " 28.
S. W. S. W. " 30.
S. E. N. E. " 32.
S. W. N. E. " 32.
S. E. N. W. " 32.
S. W. N. W. " 32.
Lot 1, " 32.
N. E. N. W. " 36.
S. W. N. W. " 36.
N. W. S. W. " 36.

TOWNSHIP 89, RANGE 33.

S. E. S. E. sec. 2.
N. W. S. W. " 4.
S. W. S. W. " 4.
S. W. S. E. sec. 6.
N. W. S. W. " 6.
S. E. S. W. " 6.

S. E. S. E. sec. 6.
53 S. E. N. E. " 8.
S. W. N. E. " 8.
N. E. N. W. " 8.
N. W. N. W. " 8.
N. E. S. E. " 8.
N. E. S. W. " 8.
N. W. S. W. " 8.
N. W. S. W. " 10.
N. E. N. W. " 12.
S. W. N. W. " 12.
N. W. S. W. " 12.
S. W. S. W. " 12.
N. E. N. E. " 14.
N. E. S. E. " 14.
54 N. W. S. W. " 18.
S. E. S. W. " 18.
S. W. S. W. " 18.
N. E. N. E. " 20.
S. W. N. W. " 20.
S. E. S. E. " 20.
S. E. N. E. " 22.
N. W. N. W. " 22.
S. E. N. W. " 22.
S. W. S. E. " 22.
S. E. S. W. " 22.
N. E. N. W. " 24.
S. E. N. W. " 24.

S. W. S. W. sec. 6.
S. E. S. E. " 14.
N. W. S. W. " 14.
S. W. S. W. " 14.
N. W. N. E. " 18.
S. W. N. E. " 18.
N. E. N. W. " 18.
N. W. N. W. " 18.
S. E. N. W. " 18.
S. W. N. W. " 18.
N. E. S. E. sec. 18.
N. W. S. E. " 18.
S. E. S. E. " 18.
S. W. S. E. " 18.
N. E. S. W. " 18.
N. E. S. E. " 24.
S. E. S. E. " 24.
S. W. S. E. " 24.
S. E. S. W. " 24.
N. E. N. E. " 26.
N. W. N. E. " 26.
S. E. N. E. " 26.
S. W. N. E. " 26.
N. E. N. W. " 26.
N. W. N. W. " 26.
N. W. N. W. " 32.
S. E. S. W. " 34.
S. W. S. W. " 34.

TOWNSHIP 88, RANGE 34.

Lot 5, sec. 2.
55 N. E. N. E., sec. 14.

TOWNSHIP 86, RANGE 31.

S. E. S. W. sec. 10.

Whereof you are not to fail, at your peril.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at Des Moines, in said district, this 3rd day of October, A. D. 1872.

(Signed) GEORGE B. CORKHILL, *Clerk.*

56 And afterwards, to wit, on the 17th day of October, 1872, a copy of said restraining-order was returned by the marshal of said district and filed in said clerk's , with his return of service endorsed thereon; which said return is in words and figures following, to wit:

57 The above and foregoing restraining-order of court came into my hands Oct. 4, 1872, and on the 5th day of October, 1872, I served the same on Calhoun County and W. T. Smith, treasurer of Calhoun County, Iowa; on Calhoun County by reading said order to Francis E. Stevenson, auditor of said Calhoun County, and delivering to him a copy therof, and on W. T. Smith, treasurer of Calhoun County,
58 by reading to him the original order and personally delivering the same to him; all done in Calhoun County, Iowa.

(Signed) PETER MELENDY,
U. S. Marshal,
By V. E. ROWLEY,
Special Deputy.

Marshal's fees: Mileage, 150, 9.00; two services, 4.00, two copies, 4.00—$17.00. Paid by plff.

(Endorsed:) Filed Oct. 17, 1872. George B. Corkhill, clerk.

59 And on the 15th day of October, the same being of the October term, 1872, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

60 United States circuit court, district of Iowa, October term, A. D. 1872. Tuesday, Oct. 15, 1872.

THE AMERICAN EMIGRANT COMPANY *vs.* CALHOUN COUNTY AND W. T. SMITH. } No. 335. Eq.

In this cause the court orders that the hearing of the application for injunction be continued until such day during the term as may suit the convenience of the court in the hearing thereof, and that the restraining-order heretofore made be continued in force until such hearing.

61 And on the 18th day of October, A. D. 1872, the defendants, by their attorneys, Mess. Grant & Smith, filed in said clerk's office their answer to the bill of complaint; which said answer is in words and figures following, to wit:

62 U. S. C. C. dis. Iowa, Oct. term, 1872.

THE AMERICAN EMIGRANT CO. *vs.* THE COUNTY OF CALHOUN & W. T. SMITH, treasurer.

Now come the defendants, and, saving all lawful exceptions to said bill, for answer to so much as they are advised that it is material for them to answer, say:

That it may be true that the plaintiff is the legal owner of the lands therein described, but it is not true that it acquired title by means of a decree of this court, on the 20 of May, 1872.

And, further answering, these defendants say that said lands referred to in said petition were certified to the State of Iowa as swamp-lands by the laws of the United States, the latest of them as early as the year 1867, and they were selected as swamp-lands as early as the year
63 1864, and most of them as early as 28th June, 1859. Some of them were approved & certified as swamp-lands as early as 10 June, 1861. They were certified by the Sec. of Interior of the United States as swamp-lands to the State of Iowa, and granted by the State of Iowa to the county of Calhoun as swamp-lands, & for swamp-land as early as 1867. This part of the answer refer' to schedule A. And as to the lands in schedule C, if they belong to the United States, as alleged, no sale for taxes is valid or will affect the U. S. *States* title thereto.

The defendants admit the making of the contract of 1861 between the county of Calhoun & the plaintiffs. The agreement in that contract not to levy taxes on them was null & void, & a violation of the laws of the State. The county of Calhoun had no right to exempt said lands

from taxes, or any other lands to which the plaintiffs had inchoate title.

It is true that the county of Calhoun made the deed to the plaintiffs on 1st of April, 1863; it is also true that said deed was to remain
64 as an escrow*er* until a mortgage was given, as named in the bill. And it is also true, that no mortgage was given. That was the default & neglect of the plaintiffs, and they can claim no benefit in this court for their own neglect. The said deed was put on record by the plaintiff or their agents, and for their benefit, and they have always claimed title under it, and resisted the cancellation thereof, and it was obtained by the plaintiff's agent from the agent of the county, without giving the mortgage which was to have been given.

It is true that the defendants filed the bill named in the petition, and the proceedings referred to were thereon had, and the settlement therein referred to was made.

And the supervisors of said county were induced to make said settlement by the conduct of their counsel in that cause, and not from any conviction that it was right to do so, but said settlement ratified said deed and gave to the plaintiffs a legal title relating back to its date.

65 It is also true that the officers of Calhoun County may not have levied taxes on said land by reason of said suit, but their failure to do so did not waive their right to have them collected, nor the duty of the plaintiffs to pay them.

And these defendants aver that said lands were subject to taxation under the contract of 1861 and the deed of 1863, and the certified title of the United States to the State as early, for the whole of them, as 1867, became liable to taxation from the year 1868 to this time; and the treasurer has assessed said lands for taxation as lands not assessed, and it was not only his duty to assess them, but it was, & is now, the duty of the defendants to pay all the taxes lawfully due on said lands, & interest & penalties, not only for the year '70 & '71, but for the year 1863 & subsequent, as they were certified by the Sec. of Int.

66 And these defendants refer to the bill & answer cited by the plaintiffs, & the contracts & evidence therein set out, and make them part of this answer.

And having answered all the allegations of said bill, they pray that the same may be dismissed, with costs.

(Signed) GRANT & SMITH, *For Defts.*

U. S. C. C., Diss. Io.

I, Joseph Yates, chairman of the board of supervisors of Calhoun County, being duly sworn, declare on oath that I have read the foregoing answer, and verily believe the facts therein set forth are true.

(Signed) JOSEPH YATES.

Subscribed and sworn to before me this 15 day of Oct., 1872.

(Signed) GEORGE B. CORKHILL, *Clerk.*

(Endorsed:) Answer. Filed Oct. 18, 1872. George B. Corkhill, clerk.

67 And afterwards, to wit, on the 24th day of Oct., 1872, there was filed in said clerk's office certain affidavits, of which the following are true copies, to wit:

68 STATE OF IOWA, *Polk County, ss:*

Personally appeared before me, the undersigned, a notary public in and for said county, H. L. SKINNER, who, being duly sworn, on oath states that he is & has for several years been agent for the American Emigrant Company, in charge of their land-office, at Des Moines, & charged, amongst other duties, with looking after the payment of taxes on land in the different counties; that said company has & has had in Calhoun County a local agent to attend to their business, under instructions, from time to time; that said agent was instructed to pay all taxes assessed on the company's lands in said county as soon as the same became due, and that he reported that no taxes were assessed on said land. And affiant states that there were no taxes assessed on said lands prior to the settlement of the suit of Calhoun County vs.
69 said company, in the United States cir. court, at the last term of said court, and that if such taxes had been assessed, the same would have been paid when due, without interests or costs.

(Signed) H. L. SKINNER.

Subscribed & sworn to by H. L. Skinner, before me, this 24th day of October, A. D. 1872.

[NOTARIAL SEAL.] S. S. ETHRIDGE,
Notary Public.

70 In U. S. cir. court, dis. of Iowa, October term, 1872.

THE AMERICAN EMIGRANT CO.
vs.
CALHOUN COUNTY.

STATE OF IOWA,
Polk County, ss:

Personally appeared before me, the undersigned, notary public in & for said county, J. C. SAVERY, who, being sworn, on oath states that he has for many years been connected with the business of the American Emigrant Company in the State of Iowa; that he was general agent for said company in the prosecution of land-claims & the management of the business of the company in said State, and that he is still connected with said company as a member of the board of trustees, and conversant with the business thereof; and he further says that said company has for several years been to a great extent deprived of the use & enjoyment of the lands bought by them of the county of Calhoun, and retarded in the selling & settling of said lands & realizing
71 anything therefrom, by reason of said county claiming title to said land, and refusing to recognise the right of the company thereto, and bringing suit to set aside the same up to the time of the settlement of said suit, & the rendition of the decree in pursuance of said settlement; and further, that the course pursued by said county has been detrimental to the interest of said company.

(Signed) J. C. SAVERY.

Subscribed & sworn to by J. C. Savery, before me, this 24th day of Oct., A. D. 1872.

[NOTARIAL SEAL.] (Signed) S. S. ETHRIDGE,
Notary Public, Polk Co., Iowa.

(Endorsed:) Affidavits for plff. Filed Oct. 24, 1872. George B. Corkhill, clerk.

72 And on the 26th day of October, the same being of the October term, 1872, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, A. D. 1872.
Saturday, Oct. 26, 1872.

THE AMERICAN EMIGRANT CO.
vs.
CALHOUN COUNTY ET AL. } No. 335. Eq.

This day this cause came on to be heard upon plff.'s motion for an injunction against the defendants. Plff. appears by Nourse & Kauffman and defts. by Grant & Smith; and the court having heard arguments of counsel thereon, takes the same under advisement. Also come defts. and file their answer. And thereupon it is ordered that the time for taking testimony herein be extended to next term of this court, and that the case be continued. It is further ordered that in the mean time the restraining-order issued herein, and served upon said defendants, be continued in force.

73 And afterwards, to wit, on the 4th day of November, A. D. 1872, defendants, by their attys., file in said clerk's office its amended answer; which said amended answer is in words and figures following, to wit:

74 THE AMERICAN EMIGRANT CO.
vs.
THE COUNTY CALHOUN.

The said County of Calhoun, by leave of the court, files the following amendment and addition to their answer in this case:

These defendants deny that the said county authorities had not ass'ed said lands, or levied taxes thereon, in pursuance of the express direction and order of the board of supervisors of said county.

(Signed) GRANT & SMITH,
For Defts.

I, Joseph Yates, do declare that I am chairman of the board of supervisors; that I have examined the records of the board of supervisors of said county, from the year 1861 to this date, and that there is no memorandum in writing on the records or among the papers of said board having any order or direction that the lands in controversy should
75 not be taxed; and I believe the above allegations of the amended answer to be true.

(Signed) JOSEPH YATES.

Subscribed and sworn to before me this first day of November, A. D. 1872.

[NOTARIAL SEAL.] (Signed) JAMES GLOVER,
Notary Public.

(Endorsed:) Filed Nov. 4, 1872. George B. Corkhill, clerk.

76 And on the 8th day of March, 1873, the same being in vacation, there appears on the records of the proceedings of said court in said cause the following entry, to wit:

United States circuit court, district of Iowa, March 8, 1873.

On this 8th day of March, A. D. 1873, there was received from the Hon. John F. Dillon, U. S. circuit judge for the eighth circuit, the following order:

AMERICAN EMIGRANT CO.
vs.
CALHOUN COUNTY ET AL.

Ordered, that the motion to dissolve the temporary injunction heretofore ordered by the district judge be denied, and the said injunction continued in force until otherwise ordered.

March 5, 1873.

(Signed) JOHN F. DILLON,
Circuit Judge.

Attest: GEORGE B. CORKHILL, *Clerk.*

77 Afterwards, to wit, on the 22d day of May, 1873, the same being of the May term of said court, there appears in the records of the proceedings thereof in said cause, the following entry, to wit:

United States circuit court, district of Iowa, May term, A. D. 1873, Thursday, May 22, 1873.

THE AMERICAN EMIGRANT CO.
vs.
CALHOUN COUNTY ET AL. No. 335. Eq.

This cause came on to be heard. Defendants appear by James Grant, esq., and submits the case, on their part, to the court in writing.

78 Afterwards, to wit, on the 29th day of May, the same being of the May term, 1873, of said court, there appears in the records of the proceedings thereof, in said cause, the following entry, to wit:

United States circuit court, district of Iowa, May term, A. D. 1873, Thursday, May 29, 1873.

THE AMERICAN EMIGRANT COMPANY
vs.
CALHOUN COUNTY ET AL. No. 335. Eq.

This cause came on this day to be heard, and, by consent of parties, complainant is given leave to file a general replication to defendant's answer.

79 On the same day, to wit, May 29, 1873, the plaintiffs, by its attorneys, filed in said clerk's office its replication, which said replication is in words and figures following, to wit:

80 *Replication.*

In the circuit court of the United States, dist. of Iowa.

THE AMERICAN EMIGRANT COMPANY, PLAINTIFF,
vs.
THE COUNTY OF CALHOUN ET AL., DEFENDANT.

The repliants saving and reserving unto themselves all and all man-

ner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereto, sayeth that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained
81 material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) NOURSE, KAUFFMAN & HOLMES,
Sols. for Plaintiff.

(Endorsed:) Filed May 29, 1873. George B. Corkhill, clerk.

82 Afterwards, to wit, on the 3rd day of June, the same being of the May term, 1873, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term, A. D. 1873,
Tuesday, June 3d, 1873.

THE AMERICAN EMIGRANT CO.
vs.
THE COUNTY OF CALHOUN AND W. T. SMITH, treas. of said county. } No. 335. Eq.

And now this cause coming on for a final hearing upon the bill, answer, and replication, and the same having been submitted to the court upon argument of counsel, the court find that the equity of the cause is with the complainants, and it is ordered and adjudged that the restraining order heretofore issued, restraining the said County of Calhoun
83 and the treasurer of said county from enforcing the pretended assessment of taxes on the lands described in complainant's bill for the years 1870 and 1871, be made perpetual, and that said County of Calhoun, its agents and officers, be, and they are, hereby perpetually enjoined from assessing or collecting taxes on said land for said years of 1870 and 1871, or enforcing said assessment by any sale of said lands for the years 1870 and 1871, and that the said pretended assessment is void, and of no effect. It is further ordered and adjudged that complainants have and recover of defendant the costs in their behalf, taxed at $, and that execution issue therefor.

(Signed) J. W. LOVE.

84 And afterwards, to wit, on the 13th day of May, 1874, defendants, by their attys., filed in said clerk's office their prayer for an appeal, in words and figures following, to wit:

85 Circuit court of the United States for the district of Iowa.

THE AMERICAN EMIGRANT COMP'Y
vs.
THE COUNTY OF CALHOUN, & W. T. SMITH, treasurer thereof.

Now comes the said County of Calhoun & W. T. Smith, its treasurer,

and prays for an appeal in the said cause, and they hereby tender to the court an appeal-bond in said cause.

(Signed) GRANT & SMITH,
For the Defendants.

(Endorsed:) Filed May 13, 1874. George B. Corkhill, clerk.

86 On the same day, to wit, on the 13th day of May, 1874, the same being of the May term of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1874. Wednesday, May 13, 1874.

THE AMERICAN EMIGRANT COMPANY *vs.* CALHOUN COUNTY AND W. T. SMITH, TREASURER THEREOF. } No. 335. Eq.

This day came Grant & Smith, defendants solicitors, and prayed an appeal to the Supreme Court of the United States from the decree of this court, which is allowed upon defendant's filing bond in the penal sum of five hundred dollars, conditioned as the law directs, with sureties.

87 And afterwards, to wit, May 14, 1874, there was filed in said clerk's office an appeal-bond, which is in words and figures following, to wit:

88 Know all men by these presents, that the County of Calhoun, in the State of Iowa, and T. M. Smith, principal, and James Grant, surety, are held and firmly bound to the American Emigrant Company in the penal sum of five hundred dollars, to which payment we bind ourselves, & each of us, by these presents this 14th May, 1874.

The condition of this obligation is this: Whereas the said Calhoun County & Smith have taken an appeal from the decision of the circuit court of the United States for the district of Iowa, in a cause therein pending wherein the American Emigrant Company was plaintiff & said Calhoun County & Smith were defendants:

Now, if said appellants shall duly prosecute said appeal, pay all costs adjudged against them, and abide by and perform the order & decree of the Supreme Court, this obligation shall be void; otherwise to remain in full force & effect.

(Signed) CALHOUN COUNTY,
By J. GRANT, *Atty.*
T. W. SMITH.
JAMES GRANT.

Approved May 14, 1874.

SAM. F. MILLER, *Judge.*

89 And on the 20th day of May, 1874, said defendants, by their said attorneys, filed in said clerk's office a citation, with return of service endorsed thereon, which said citation and return are as follows, to wit:

To the American Emigrant Company:

You are hereby cited & admonished to be and appear before the Su-

preme Court of the United States, at the Capitol, in Washington, on the second Monday of October, 1874, to hear and answer the appeal of the County of Calhoun & its treasurer, W. T. Smith, in a cause therein pending on appeal from the circuit court of the United States for the district of Iowa, wherein you were the plaintiff and said Calhoun County and Smith are defendants.

SAM. F. MILLER.

Service of the above duly accepted this 20 day of May, 1874.

NOURSE & KAUFFMAN,
For the Am. Em. Co.

(Indorsed:) Filed May 20, 1874. George B. Corkhill, clerk.

90 In the circuit court of the United States, for the district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all pleadings, papers, record entries, and decree in a certain cause adjudicated in said court, wherein The American Emigrant Company was plaintiff and the County of Calhoun and W. T. Smith, treasurer thereof, were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 9 day of September, A. D. 1874.

[SEAL.]

GEORGE B. CORKHILL,
Clerk U. S. C. C. District of Iowa.

91 In the Supreme Court of the United States, Oct. term, A. D. 1874.

THE AMERICAN EMIGRANT COMPANY, appellee,
v.
THE COUNTY OF CALHOUN AND W. T. SMITH, appellant.

Appeal from dist. of Iowa.

Now comes the County of Calhoun & W. T. Smith, appellants, by James Grant, their attorney, & say that in the records and proceedings of the court below ther' was error—

1st. By its final decree given June 3, A. D. 1873, by sustaining complainant's bill.

2d. By adjudging that the restraining order against said Calhoun County & W. T. Smith be perpetual.

Wherefore complainant prays that said judgment may be reversed.

JAMES GRANT,
For the Appellant.

(Indorsement on cover:) No. 267. The County of Calhoun and W. T. Smith, treasurer, appellant, vs. The American Emigrant Company. Iowa C. C. U. S. Filed 26th September, 1874.

ARGUMENT FOR DEFENDANT IN ERROR.

UNITED STATES SUPREME COURT

NO. 267.

THE COUNTY OF CALHOUN AND W. T. SMITH

VS.

THE AMERICAN EMIGRANT COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

C. C. NOURSE, ATTORNEY FOR DEFENDANT IN ERROR.

UNITED STATES SUPREME COURT

THE COUNTY OF CALHOUN, and W. T. SMITH, *Appellants*, vs. THE AMERICAN EMIGRANT CO. } No. 267.

This is a bill in equity, asking a perpetual injunction against the county of Calhoun and its treasurer, W. T. Smith, enjoining them from selling certain real estate for delinquent taxes. The land is described in schedules "A" and "B." The case was submitted to the Court upon bill, answer and replication, without evidence. The facts, as admitted of record, are as follows:

In December, 1861, the county of Calhoun contracted to sell certain lands, known as the swamp lands of the county, to the American Emigrant Company, upon certain terms and conditions specified, which contract, among other stipulations provided "that the party of the first part, to-wit: the county should not assess any taxes against said lands, until after the time they should be conveyed, on the request of the party of the second part." It further appears from the bill, and is admitted in the answer, that on the first of April, 1863, the board of supervisors of Calhoun county executed to the American Emigrant Company a deed of conveyance to the said lands, but recited in the conveyance that the deed was delivered as an *escrow* to the clerk of the District Court of the county, who was also *ex-officio* clerk of the board of supervisors, who was authorized to deliver the same to the American Emigrant Company only when the said company should execute a mortgage back to the county, conditioned to secure the full performance of said contract of December, 1861. It further appears in the bill, and is admitted in the answer, that no

mortgage was executed by the American Emigrant Company, but that the deed by some means or agency which is not disclosed in the record, was filed for record with the recorder of deeds of the county, and was duly recorded.

The bill charges that F. C. D. McKay, the general agent of the American Emigrant Company, who had charge of this business, died prior to April, 1869, and that the county of Calhoun, in April, 1869, commenced a suit in the District Court of the county to cancel and set aside the contract and the deed, charging that the contract had never been performed, and that the deed had never been delivered by the clerk of the District Court, and that the conditions precedent upon which said deed was to have been delivered, were never fully performed. The said suit was transferred to the Circuit Court of the United States for the District of Iowa, and a great amount of testimony was taken ; and pending the controversy, the board of Supervisors of Calhoun county, in March, 1872, passed certain resolutions, set out on page 11 of the record, authorizing their attorney, D. D. Miracle, to consent to a settlement of said suit, and as part of the terms of said settlement to consent, in consideration of certain moneys to be paid to the county—

"To a decree vesting and declaring the title to all the swamp lands and swamp land interests of said county now in dispute, to be in said American Emigrant Company."

It further appears by the bill and answer, that the American Emigrant Company complied with the terms of said settlement, and the United States Circuit Court did, at the May term, 1872, enter its decree upon the stipulation of parties in which it was decreed that the bill of complainants be and the same was dismissed as upon the merits upon final hearing, and that the said dismissal should forever operate as a bar and estoppel upon the county, to set up any title or right to the lands or funds in controversy in the suit, or to maintain any suit or proceedings, either at law or in equity, in anywise impeaching the title of the American Emigrant Company, to the lands in controversy in the suit.

It is further averred and is admitted in the answer, that the county of Calhoun, never, up to the date of this decree, had any of the lands in controversy entered upon their assessments, nor had any taxes been levied on the same, but that on the contrary the bill filed by the county of Calhoun, against the American Emigrant Company, in the former suit, charged—

"That the deed to the Company was never, in any manner, sanctioned, ratified or approved by the county, but that the county had uniformly resisted and maintained that the possession of said deed, by the company, was unauthorized and wrongful, and that the title to the land was still in the county, and that so maintaining the county authorities, charged with the duty of levying and assessing and collecting the taxes, had never assessed the said lands or levied taxes thereon."

No denial of this is made in the answer, except that "such omission was not by express direction or resolution of the board of supervisors." (See amendment to answer, page 20.)

After this decree was entered by stipulation and the American Emigrant Company had paid the moneys to the county, as provided in the stipulation, the treasurer, without any authority, or request from anyone entered upon the tax books for the years 1870 and 1871, the lands marked in schedules "A" and "B," being the lands in controversy in the former suit, and extended a computation of taxes and interest and penalties for non-payment thereof, and proposed to sell the same in October, 1872, for these pretended delinquent taxes. The bill charges that this pretended assessment of the lands is illegal, fraudulent, and in bad faith upon the part of the county and its officers and agents, and prays a perpetual injunction against the intended wrong. The Circuit Court rendered a decree in accordance with the prayer of the petition, from which decree the county appeals.

ARGUMENT.

So long as these lands remained the property of the county, it is conceded that they were not liable to taxation. Section 711 of the Revision of 1860, of the laws of Iowa, provided that the following classes of property should be omitted from the assessment, to-wit:

"Property of the United States and of this State, the property of a county, township, incorporated town, a school district and devoted entirely for public use and not held for pecuniary profit."

And our Supreme Court in the case of *The County of Guthrie vs. The County of Carroll, et al., 34 Iowa, 111*, gives a construction to this statute and holds, "that as the proceeds of these lands were to be devoted by the counties to certain works of public improvement, that they were exempt from taxation." It will be seen by the averments of the petition

and the admissions of the answer in this case, that the lands in controversy were lands in place, lying within the county of Calhoun and were not lands entered in any other county, with swamp land scrip, and did not come within the class that might be taxed under the act of April 16, 1870, referred to in the decision above. Hence, it will be seen that if the county claimed to own these lands and claimed that the American Emigrant Company was not entitled thereto, and that the deed which had been delivered to the clerk of the board, as an escrow had been improperly and illegally recorded, that it was the duty of the county officers not to tax these lands or enter them upon the tax duplicates ; and this position, it appears, by the record, the county had assumed towards these lands up to the time of the settlement with the American Emigrant Company, under the resolutions of March 11, 1872. These resolutions, in terms, directed a compromise of the suit and directed that the attorney should consent "to *a decree vesting and declaring the title* to the lands then in dispute, to be in said American Emigrant Company, upon the following basis and terms, to-wit :" etc.

Upon the faith of this settlement the American Emigrant Company paid out the moneys mentioned in said terms of settlement. What we claim is, that it is bad faith on the part of the county now to assert, and that the county is now estopped from asserting, that the American Emigrant Company acquired or held the title to these lands under or by virtue of the contract and conveyance theretofore existing.

The authority of the treasurer to enter these lands upon the assessment list is claimed under section 752 of the Revision of 1860, which provides that :

"It shall be the duty of the County Treasurer to assess any real property subject to taxation which may have been omitted by the assessors or the County Clerk, and to collect taxes thereon and in such case he is required to note opposite the lot assessed the words "By the Treasurer."

Chapter 104 of the Acts of 1866, Laws of Iowa, provides an amendment to this section as follows :

"That such assessment shall be made within two years after the tax list shall have been delivered to him for collection and not afterward."

The authority of the Treasurer as given in this section is intended, as the Court will see by an examination of the preceding sections, to authorize the treasurer to supply omissions resulting from the inadvertance or mistakes of the officers whose duty it is to enter property upon the tax lists

and to assess the same in proper form and time. The lands in controversy were not omitted within the meaning of this section; they were adjudged by the county authorities to be exempt from taxation, and they were not entered upon the books for taxation as averred by the county in its bill against the American Emigrant Company, "because the county claimed to be the owner of the lands," and it was in view of this claim of right upon the part of the county and the attitude that the county had assumed with reference to the land, that the American Emigrant Company was induced to make a settlement in accordance with the resolution of the board of supervisors adopted in April, 1872. As averred in the present bill the agent of the company was dead, and the company had no means of establishing its right to the possession of the deed. The burden of proof was upon the company for that the deed itself upon its face recited, that it was to be delivered as an escrow and the condition named in the deed had not been complied with.

When, therefore, the American Emigrant Company made this settlement, they so far conceded the position of the county of Calhoun, and agreed to pay the county the money and take a decree that should vest the title of these lands in them. By the language of the proposition made by the county for this settlement the company took their title as of the date of the *decree*, which it was stipulated should *vest* the title in the company. In view of the position assumed by the county and the allegations made by the county against the right of the company there can be no question, that the attempt now made to assess taxes upon these lands on the hypothesis that the land had belonged to the Emigrant Company prior to the date of this decree, is an act of bad faith upon the part of the county, and that the county having obtained money from the American Emigrant Company upon a different assumption of right, should be estopped from assuming such a position.

This whole question is so fully disposed of by the Supreme Court of Iowa in the case of *The Iowa Land Company vs. Story County*, 36 Iowa 49, that we deem it unnecessary to cite many authorities upon the doctrine of estoppel. In that case it appears that the county of Story had entered into a contract with the Cedar Rapids & Missouri River Railroad Company in April, 1863, by which it had agreed to convey to the railroad company its swamp lands, whenever the company should complete its railroad to the town of Nevada within one thousand yards of the Court House in said town and county. It further appeared that the railroad was completed according to

contract on the 4th of July, 1864, within the time specified. That on the 5th of September, 1864, the railroad company notified the board of supervisors of the completion of the railroad and demanded the fulfillment of the contract on the part of the county. That, the board of supervisors under various pretexts refused to comply with the request until the 15th of June, 1867, and then conveyed only part of the land, requiring the railroad company to execute a quit claim deed for the remainder. That whilst the controversy was pending, the county has assessed the lands for the taxes of 1865 and 1866, and a part of them for the year 1864, and caused them to be sold. And the Supreme Court hold that the county could not thus wrongfully withhold the title to the property and the benefits of ownership thereof, and at the same time subject the property to the burdens for the benefit of the party thus wrongfully withholding the title. In other words the Court says the county having during these years denied the right and title under which the plaintiff claims, is now equitably estopped from asserting that it then had the title.

We also cite the Court to the case of *Adams County vs. B. & M. R. R. Co.*, 39 Iowa, 511. That case was a bill filed by Adams county against the B. & M. Railroad Company to quiet title to certain swamp lands claimed by the county under the Act of 1850. The opinion recites the facts as follows: That the railroad company claimed the lands under the railroad grant of 1856, and had certain certificates therefor from the Department of the Interior. That the county authorities had taxed these lands as property of the railroad company for the years 1861 to 1868, inclusive. That in 1869, the railroad company presented a petition to the board of supervisors claiming that a portion of the taxes assessed upon its lands were illegal. That the board of supervisors agreed to compromise this claim for taxes, and adopted a resolution remitting the sum of $12,610 of the taxes assessed against the railroad company's lands, including the lands in controversy, on condition that the company would pay the balance claimed, to-wit: $10,000, within ten days thereafter. That the railroad company had accepted the proposition and paid the taxes, and that $600 of the $10,000 thus paid, was upon the lands, to which the county was then asking to quiet her title. The court decided that "the county having recognized the title of the railroad company, by assessing and collecting taxes against the lands, that it was thereby estopped from denying the existence of the fact, upon which such advantage was secured," and dismissed complainant's bill.

In the case of *Lucas vs. Hart*, 5 Iowa, 417, the Supreme Court has laid down the doctrine, that to constitute an estoppel *in pais* but three things are necessary. First, that the party has made an admission or assertion inconsistent with the claim which he proposes to set up. Second, that the other party has acted upon such admission or assertion; and, third, that such other party will be injured by allowing the truth of such admission or assertion to be disproved. These things all concur to make the estoppel complete in the case now before the court. First, the county has asserted that it retained the title up to the date of the decree entered by stipulation, and that the company had no taxable interest in the lands, and that no taxes had been assessed upon the lands because the county claimed to be the owner thereof. Second, we have the American Emigrant Company, acting upon such assertion, and conceding the truth thereof, so far as to be willing to pay a valuable consideration to induce the county to abandon its claim; and, third, we have the county now, attempting to assert the contrary to its former claim, to the wrong and injury of the right of complainants.

Again, we claim that the attempt to encumber this property by the assessment of taxes for past years, was an express violation of the terms of the stipulation and agreement between the county and the American Emigrant Company. It was agreed that a decree should be entered that should vest the title in the company as against the county, and that the county should be forever estopped *by the decree* from setting up any title or right to the lands in controversy, or to maintain any suit or proceeding either at law or in equity, in anywise impeaching the title of the American Emigrant Company to the lands in controversy. We claim that the attempt of the county of Calhoun, through its officers or agents to assert a lien for delinquent taxes, existing as of the date of this compromise and decree, is in violation of the express terms of the decree and of the stipulation upon which it was entered, because that it is asserting a claim to the lands or an incumbrance upon them.

We refer the Court to the case of *Pursley vs. Hays*, 17 Iowa 311, which was a suit upon the part of Pursley to set aside a certain sale by a guardian. The answer alleged that after the minor became of age, and with the full knowledge of all the facts attending the sale, he had received from the guardian the consideration money that defendants had paid the guardian for the purchase. To which answer there was a demurrer. Dillon, J. delivering the opinion of the Court says: "If a

minor after he had attained his majority, with the full knowledge of the facts in regard to the sale, elected to receive the money which was the proceeds of the sale it would indeed be most strange if the law would permit him to have both the land and the purchase money." That the sale was capable of confirmation and the acts alleged, would, if proved, clearly establish a ratification of it, or at all events an estoppel upon the plaintiffs. So in the case of *Davidson vs. Foley*, 27 Iowa 217, it appears that an agent of the owner of certain real estate negotiated with a party holding liens and incumbrances thereon for the purpose of paying and discharging the same. That the agent asked for an exhibit of all liens and claims held by the creditor against the land, and was informed by the creditor that he had none other than those exhibited. These were paid by the agent and it afterwards appeared that the creditor at the time of this settlement held a certificate of tax sale which he had not exhibited, and upon which he subsequently obtained a tax deed for the land. It was held that he was estopped by the facts connected with the settlement from asserting title under his tax deed.

That a county is estopped by the acts of its officers and agents acting within the scope of their authority and in the transaction of the business that the law commits to their care, has been fully established by the decisions of this court. See the following cases :

Carondelet vs. St. Louis, 1 Black 187.
Pendleton County vs. Amy, 13 Wal., 298.
Moran vs. Miami Com., 2, Black 722.
Mayor vs. Sheffield, 4 Wal., 189.

The foregoing argument applies peculiarly to the lands in Schedule "A." of the bill.

As to the land described in schedule "B." there is no pretense upon the part of the county that they are taxable. It is conceded that the title is still in the United States, and that the lands have not yet been certified to the State or to the county under the Swamp Land Act of 1850. The only defense made to our bill as to these lands is, that we have no such interest in them as will enable us to maintain this suit. By the terms of the stipulation and decree the American Emigrant Company has vested in it the inchoate right of the county, and whenever the title shall be procured from the government it will enure to the company under this decree. Hence the right to maintain our suit to protect whatever title may here-

after be acquired. Under the Swamp Land Act of 1850, and the acts amendatory thereto, the evidence of title remains in the Government until a patent is duly issued from the Department of the Interior.

The attempt to charge up penalties under the statute equal to the amount of the tax as for delinquent taxes was clearly illegal and monstrous, as it is admitted that no taxes had been levied, and consequently there could be no delinquency. But we insist that the decree granting a perpetual injunction as to the entire tax was correct and should be affirmed. The cause is submitted.

C. C. NOURSE,
for NOURSE & KAUFFMAN,
Counsel for American Emigrant Co., Deft. in Error.